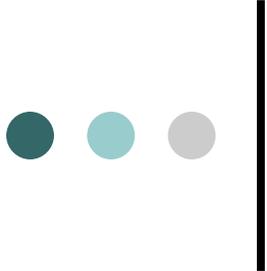




Wisconsin Public Defender Defense Strategies in Cross Examination 2010

Wilbur M. Zevely
And
Jerry Cox



How to Make Cop Your Witness or Rules of Cross in DUI

- Never Repeat the direct
- Never repeat bad facts
- Review all good points – indications of sobriety – things your citizen did properly
- Use the cop to advance your theory of the case



Mistakes Made in Cross

- Lack of preparation
 - Discovery
 - Motion Practice – A way to win quick
 - Bad stop – driving doesn't violate law or show reasonable suspicion
 - Dixon motions - 2000 WL 1760664 – what right to go beyond stop
 - State V Chatton 463NE2d1237
 - Field tests – no showing of probable cause to arrest
 - Reasonable suspicion DUI required to give BA KRS 189A.103 (1)
 - Knowledge is power
- Not asking leading questions
- Not keeping total control of cop
- Repeating prosecution case
- Never ask open ended questions



Impeachment

- RAC
 - Reconnect
 - Accredit
 - Confront
- ARC
 - Reconnect
 - Accredit
 - Confront

COMMONWEALTH OF KENTUCKY
UNIFORM CITATION

KSP 206 (REV 2/1/06)

COURT

OFFENDER / VIOLATOR	AGENCY <i>Uma Hills Police</i>		ORI: <i>KY 0591208</i>
	NAME (L-F-M) SKIP A SPACE BETWEEN NAMES <i>Man dragon, Jesse H</i>		ATTN: <input type="checkbox"/>
	ALIAS		HOME PHONE
	ADDRESS (RFD/STREET/APT. NO., ETC.) <i>1516 Sequoia Ln</i>		EMERGENCY PHONE
VEHICLE	CITY <i>Hobson</i>		STATE <i>KY</i>
	ZIP <i>41048</i>		KENTUCKY RESIDENT STATUS F. <input type="checkbox"/> FULL TIME P. <input type="checkbox"/> PART TIME N. <input type="checkbox"/> NON RESIDENT
	ID. TYPE/STATE <i>02/KY</i>	ID. NUMBER <i>Mos. 304-204</i>	S.S. NUMBER
	DATE OF BIRTH <i>7/12/67</i>	SEX <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	RACE <input checked="" type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> AM. INDIAN OR ALASKAN <input type="checkbox"/> ASIAN
	PLACE OF EMPLOYMENT / OCCUPATION		CITY STATE
	VEH. MAKE <i>Toyota</i>	VEH. TYPE <i>03</i>	VEH. YEAR <i>2010</i>
	REG. STATE <i>KY</i>	REG. YEAR <i>11</i>	REGISTRATION NO. <i>026 K5N</i>
	VEHICLE IDENTIFIERS <i>Tundra</i>		MPH IN MPH ZONE VOL. KE
	VIOLATION DATE <i>7/16/10</i>		VIOLATION TIME <i>0217</i>
	EXACT LOCATION OF VIOLATION / ARREST <i>Amsterdam @ Collins</i>		B.A. RESULTS
DATE OF ARREST <i>7/16/10</i>	TIME OF ARREST <i>0225</i>	MILES <i>Combs</i>	
DIRECTION <i>Combs</i>		CITY <i>Collins</i>	
COUNTY OF VIOLATION <i>059</i>		SECT	
CHARGE(S)	VIOLATION CODE <i>00136</i>	ASCF	STATUTE / ORD. <i>189.290 CD</i>
	<i>02108</i>		<i>189A.01064 DUI</i>
COURT	COURT DATE	COURT TIME <input type="checkbox"/> AM <input type="checkbox"/> PM	PAYABLE <input type="checkbox"/> COURT
	COURT LOCATION <i>Arrest</i>		COURT CASE NO. <i>10T10197</i>
POST-ARREST COMPLAINT	POST-ARREST COMPLAINT		
	<i>1 Careless Driving - observed subject make a turn onto Collins from Amsterdam. Subject made a wide turn into on coming lane.</i>		
	<i>2 Driving under the influence - when speaking with subject he had strong odor of intoxicants on his person. Subject had slurred speech and bloodshot eyes. Subject refused all requested field sobriety tests and PBT.</i>		
	<i>Blood - Not Requested Breath - Refused Urine - Not Requested</i>		
CDL	CDL LICENSE <input type="checkbox"/> No <input type="checkbox"/> Yes	PLACARDED HAZARDOUS VEHICLE <input type="checkbox"/> No <input type="checkbox"/> Yes	
	COMMERCIAL VEHICLE <input type="checkbox"/> No <input type="checkbox"/> Yes	CDL CLASS <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C	
CASE	NAME OF WITNESS		ADDRESS
	NAME OF WITNESS		ADDRESS
	CASE NO.	1	2
	CASE NO.	3	4
CARRIED FOR UCR BY CONTRIBUTOR: <input type="checkbox"/>		<input checked="" type="checkbox"/> IN-CAR VIDEO	<input type="checkbox"/> FINGERPRINTS
OTHER AGENCY: <input type="checkbox"/> SPECIFY		<input type="checkbox"/> PHOTOS	EVIDENCE HELD
OFFICER'S SIGNATURE <i>X R. Burch</i>		BADGE / I.D. NUMBER <i>701</i>	ASSIGNMENT <i>Kahol</i>

10

K572779

1

VILLA HILLS POLICE D.U.I. INVESTIGATION REPORT

Officer: Brian Burch		Date: 07/16/2010	Time: 0217
Day of Week: Friday		Citation No: K572779	
Weather: clear		Temperature: 70's	
Name: Mondragon, Jesse			
DOB: 07/12/67	SSN: 542042790	Sex: M	Race: White
Height: 5'9"	Weight: 185	Hair Color: Bald	
Driver's License No: M05-304-204	License State: KY		
Traffic Conditions: None	Road Conditions: clear		

INITIAL OBSERVATION OF VEHICLE:

Observed subject make right turn from Amsterdam to Collins. Subject's turn put him in oncoming lane of traffic.

DISTANCE OBSERVED PRIOR TO STOP

100 feet

OBSERVATION AFTER STOP

N/A

OBSERVATION OF EXIT

Stumbled

OBSERVATION OF DRIVER

Bloodshot eyes

DESCRIPTION OF CLOTHING

Jeans, sandals, no shirt

INITIAL INTERVIEW

ODOR OF INTOXICANTS:

ON THE DRIVER

None:		Slight:		Noticeable:		Obvious:	X
-------	--	---------	--	-------------	--	----------	---

IN VEHICLE

None:		Slight:		Noticeable:		Obvious:	X
-------	--	---------	--	-------------	--	----------	---

PHYSICAL CHARACTERISTICS OF DRIVER:

SLURRED SPEECH

None:		Slight:		Noticeable:	X	Obvious:	
-------	--	---------	--	-------------	---	----------	--

THICK TONGUE

None:	X	Slight:		Noticeable:		Obvious:	
-------	---	---------	--	-------------	--	----------	--

Laughing		Sick		Belligerent		Crying		Fighting	
----------	--	------	--	-------------	--	--------	--	----------	--

Confused		Eyes Bloodshot	X	Pupils Dilated		Eyes Watery	
----------	--	----------------	---	----------------	--	-------------	--

Staggering		Swaying When Waking		Stumbling	
------------	--	---------------------	--	-----------	--

COMMENTS:

Subject allegedly involved in an assault on girlfriend.

WHERE DID YOU LEAVE FROM	933 Highknoll Ct #133
WHERE ARE YOU GOING	Home
LAST DRINK TIME	Not sure
WHAT AND HOW MUCH WERE YOU DRINKING	Couple of beers
DRIVERS ESTIMATE OF PRESENT TIME	0230
HIGHEST LEVEL OF EDUCATION	High school graduate
ARE YOU TAKING ANY MEDICATIONS	No
PHYSICAL IMPAIRMENTS	No

ARE YOU WEARING CONTACT LENSES	DNA	HARD OR SOFT?	
--------------------------------	-----	---------------	--



Good Starts

- Single fact statement
 - He was . . .
 - He wasn't . . .
 - He did . . .
 - He didn't . . .
- Cop can only answer “yes” or “no”
- Cop can never explain an answer



Bad Starts

- Would you explain
- Why
- Who
- How
- Any open ended question



Areas to Review

- Good Driving
- Good Stopping
- Good things at initial contact
- Good things about field tests
- Things that can affect all of the above



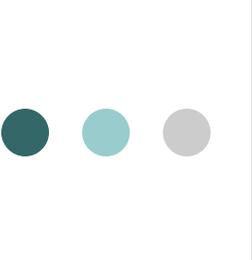
Good Driving

- No Speed
- No Weaving
- No Crossed Lines
- Proper Turns
- No Tailgating
- Distance Followed
- Uses turn signals
- Had lights on
- Didn't follow to close



Good Stopping

- Immediately Stopped
- Stopped at an appropriate place
- Pulled off the road
- Signaled
- Parked Properly
- Put in park
- Turned engine off
- Responded to emergency equipment immediately



VISUAL CUE DESCRIPTIONS

1. PROBLEMS MAINTAINING PROPER LANE POSITION [p=.50-.75]
 - A. **Weaving** - Weaving occurs when the vehicle alternately moves toward one side of the roadway and then the other, creating a zig-zag course. The pattern of lateral movement is relatively regular as one steering correction is closely followed by another.
 - B. **Weaving Across Lane Lines** - Extreme cases of weaving when the vehicle wheels cross the lane lines before correction is made.
 - C. **Straddling A Lane Line** - The vehicle is moving straight ahead with the center or lane marker between the left-hand and right-hand wheels.
 - D. **Swerving** - A swerve is an abrupt turn away from a generally straight course. Swerving might occur directly after a period of drifting when the driver discovers the approach of traffic in an oncoming lane or discovers that the vehicle is going off the road; swerving might also occur as an abrupt turn is executed to return the vehicle to the traffic lane. In the illustration below, a swerve was executed to return to a lane after a period of drifting toward opposing traffic.
 - E. **Turning With Wide Radius** - During a turn, the radius defined by the distance between the turning vehicle and the center of the turn is greater than normal. The vehicle may drive wide in a curve.
 - F. **Drifting** - Drifting is a straight-line movement of the vehicle at a slight angle to the roadway. As the driver approaches a marker or boundary (lane marker, center line, edge of the roadway), the direction of drift might change. As shown in the illustration, the vehicle drifts across the lane marker into another lane, then the driver makes a correction and the vehicle drifts back across the lane marker. Drifting might be observed within a single lane, across lanes, across the center line, onto the shoulder, and from lane to lane.
 - G. **Almost Striking Object or Vehicle** - The observed vehicle almost strikes a stationary object or another moving vehicle. Examples include: passing abnormally close to a sign, wall, building, or other object; passing abnormally close to another moving vehicle; and causing another vehicle to maneuver to avoid collision.



2. **SPEED AND BRAKING PROBLEMS** [p=.45-.70]
 - A. **Stopping Problems (too far, too short, too jerky)** - Stopping too far from a curb or at an inappropriate angle. Stopping too short or beyond limit line at an intersection. Stopping with a jerking motion or abruptly.
 - B. **Accelerating or Decelerating Rapidly** - This cue encompasses any acceleration or deceleration that is significantly more rapid than that required by the traffic conditions. Rapid acceleration might be accompanied by breaking traction; rapid deceleration might be accompanied by an abrupt stop. Also a vehicle might alternately accelerate and decelerate rapidly.
 - C. **Varying Speed** - Alternating between speeding up and slowing down.
 - D. **Slow Speed (10 m.p.h. + Under Limit)** - The observed vehicle is being driving at a speed that is more than 10 MPH below the speed limit.
3. **VIGILANCE PROBLEMS** [p=.55-.65]
 - A. **Driving In Opposing Lanes or Wrong Way On One-Way Street** - The vehicle is observed heading into opposing or crossing traffic under one or more of the following circumstances: driving in the opposing lane; backing into traffic; failing to yield the right-of-way; driving the wrong way on a one-way street. The last circumstance is illustrated below.
 - B. **Slow Response to Traffic Signals** - The observed vehicle exhibits a longer than normal response to a change in traffic signal. For example, the driver remains stopped at the intersection for an abnormally long period of time after the traffic signal has turned green.
 - C. **Slow Or Failure To Respond To Officer's Signals** - Driver is unusually slow to respond to an officer's lights, siren or hand signals.
 - D. **Stopping in Lane for No Apparent Reason** - The critical element in this cue is that there is no observable justification for the vehicle to stop in the traffic lane; the stop is not caused by traffic conditions, traffic signals, an emergency situation, or related circumstances. Impaired drivers might stop in the lane when their capability to interpret information and make decisions becomes impaired. As a consequence, stopping in lane for no apparent reason is likely to occur at intersections or other decision points.



- E. **Driving Without Headlights At Night** - The observed vehicle is being driven with both headlights off during a period of the day when the use of headlights is required.
 - F. **Failure to Signal or Signal Inconsistent with Action** - A number of possibilities exist for the driver's signaling to be inconsistent with the associated driving actions. This cue occurs when inconsistencies such as the following are observed: failing to signal a turn or lane change; signaling opposite to the turn or lane change executed; signaling constantly with no accompanying driving action; and driving with four-way hazard flashers on.
4. JUDGMENT PROBLEMS [p=.35-.90]
- A. **Following Too Closely** - The vehicle is observed following another vehicle while not maintaining the legal minimum separation.
 - B. **Improper Or Unsafe Lane Change** - Driver taking risks or endangering others. Driver is frequently or abruptly changing lanes without regard to other motorists.
 - C. **Illegal or Improper Turn (too fast, jerky, sharp, etc.)** - The driver executes any turn that is abnormally abrupt or illegal. Specific examples include: turning with excessive speed; turning sharply from the wrong lane; making a U illegally; turning from outside a designated turn lane.
 - D. **Driving on Other Than Designated Roadway** - The vehicle is observed being driven on other than the roadway designated for traffic movement. Examples include driving: at the edge of the roadway, on the shoulder, off the roadway entirely, and straight through turn-only lanes or areas.
 - E. **Stopping Inappropriately In Response To Officer** - The observed vehicle stops at an inappropriate location or under inappropriate conditions, other than in the traffic lane. Examples include stopping: in a prohibited zone; at a crosswalk; far short of an intersection; on a walkway; across lanes; for a green traffic signal; for a flashing yellow traffic signal; abruptly as if startled; or in an illegal, dangerous manner.
 - F. **Inappropriate Or Unusual Behavior (throwing objects, arguing, etc.)** - Throwing objects from the vehicle, drinking in the vehicle, urinating at roadside, arguing without cause, other disorderly actions.





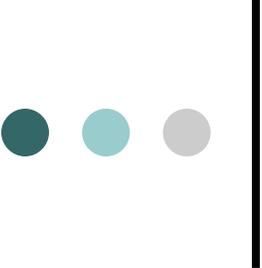
G. **Appearing to be Impaired** - This cue is actually one or more of a set of indicators related to the personal behavior or appearance of the driver. Examples of specific indicators might include:

- o Eye fixation
- o Tightly gripping the steering wheel
- o Slouching in the seat
- o Gesturing erratically or obscenely
- o Face close to the windshield
- o Driver's head protruding from vehicle

POST STOP CUES $p \geq .85$

1. Difficulty with motor vehicle controls
2. Difficulty exiting the vehicle
3. Fumbling with driver's license or registration
4. Repeating questions or comments
5. Swaying, unsteady, or balance problems
6. Leaning on the vehicle or other object
7. Slurred speech
8. Slow to respond to officer/officer must repeat
9. Provides incorrect information, changes answers
10. Odor of alcoholic beverage from the driver

Ask for Visual Detection of DWI Motorists. (DOT HS 808 677).



VISUAL DETECTION OF DWI MOTORCYCLISTS

NHTSA has also developed research identifying driving impairment cues for motorcyclists (ANACAPA Sciences, DOT HS 807 839, 1993).

Excellent Cues (50% or greater probability)

- o Drifting during turn or curve
- o Trouble with dismount
- o Trouble with balance at a stop
- o Turning problems (e.g., unsteady, sudden corrections, late braking, improper lean angle)
- o Inattentive to surroundings
- o Inappropriate or unusual behavior (e.g., carrying or dropping object, urinating at roadside, disorderly conduct, etc.)
- o Weaving

Good Cues (30 to 50% probability)

- o Erratic movements while going straight
- o Operating without lights at night
- o Recklessness
- o Following too closely
- o Running stop light or sign
- o Evasion
- o Wrong way

3. DIVIDED ATTENTION

It is important to understand the effects of alcohol are exhibited in driving so that the significance of visual cues will be recognized. Driving is a complex task involving a number of subtasks, many of which occur simultaneously. These include:

- o steering;
- o controlling the accelerator;
- o signaling;
- o controlling the brake pedal
- o operating the clutch;
- o operating to gearshift;
- o observing other traffic;
- o observing signal lights, stop signs & other traffic control devices; and
- o making decisions (whether to stop, turn, speed up, slow down).



Safe driving demands the ability to divide attention among these various tasks. "Divided attention" simply means the ability to concentrate on two or more things at the same time. Under the influence of alcohol and/or other drugs, a driver's ability to divide attention is impaired. As a result, the impaired driver tends to concentrate on only the most important or critical parts of driving and to disregard the less important parts, often creating unexpected or dangerous situations for other drivers. Two examples were particularly evident in the video segment Visual Detection of Driving While Intoxicated. In one instance the driver signaled for left turn, but actually turned right. In the other, the driver remained stopped at a green light. In each case the driver was unable to divide attention.

- o The first driver was concentrating on steering, looking for the street where he wished to turn and slowing for the turn. The driver realized that a signal was required and actually operated the signal lever. But the driver didn't have enough attention left to move the lever in the right direction. Therefore he signaled left, but turned right.
- o The second driver was stopped at a traffic light, but he did not have enough attention left to react to the specific color of the light. Therefore he did not respond to the green light.

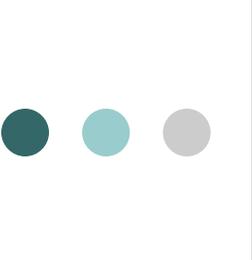
Some of the most significant evidence from all three phases of DWI detection can be related directly to the effects of alcohol and/or other drugs on divided attention ability. We will return to the concept of divided attention in Session VI. Personal Contact and Session VII. Pre-arrest Screening.

4. RECOGNIZING AND DESCRIBING INITIAL CUES

Observing the vehicle in operation is the first task in DWI detection. Proper performance of that task requires two distinct but related abilities:

- o the ability to recognize evidence of impairment; and
- o the ability to describe that evidence clearly and convincingly.

It is not enough that you observe and recognize symptoms of impaired driving. You also must be able to describe what happened so that others will have a clear mental picture of what took place. Improving your ability to recognize and clearly describe observational evidence requires practice.



5. THE STOPPING SEQUENCE

Your second task during Phase One of the detection process is to observe the manner in which the driver responds to your signal to stop, and to note any additional evidence of a DWI violation.

Cues reinforcing the suspicion of DWI may be found in the stopping sequence. After the command to stop is given, the impaired driver may exhibit additional important evidence of DWI. These cues may include:

- o an attempt to flee;
- o no response;
- o slow response;
- o an abrupt swerve;
- o sudden stop; and
- o striking the curb or another object.

Some of these cues are exhibited because the stop command places additional demands on the driver's ability to divide attention. The signal to stop creates a new situation with which the driver must cope. Flashing emergency lights or a siren demand and divert the driver's attention, requiring that the driver now divide attention between driving and responding to the stop command. Stopping itself requires the driver simultaneously to turn the steering wheel, put on the brakes, use a turn signal, and so on. Thus the driver's task becomes more complex when the stop command is given. An impaired driver may not be able to handle this more complex task and additional evidence of impairment may appear.

It is your responsibility to recognize, record and convey the additional evidence of driving impairment that may come to light during the stopping sequence. This task, like Task One, observing the vehicle in operation, requires:

- o the ability to recognize evidence of impairment; and
- o the ability to describe that evidence clearly and convincingly.

Recognizing and describing the reinforcing cues of DWI that appear during the stopping sequence requires practice.



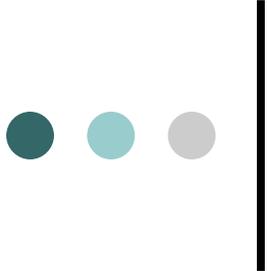
Initial Contact

- Rolled window down without difficulty
- Orderly Appearance
- No Slurred Speech
- No Smell of Alcohol
- No Watery Eyes
- No Dilated Pupils
- Truthful
- Follow Directions



Initial Contact (cont.)

- Made Sense
- Didn't argue
- Didn't curse
- No Problem with license
- No hand eye coordination impairment
- No Problem with exit
- Not unsteady on his feet
- No problem walking to point of tests
- Cooperative
- Polite



Field Tests

- Are they admissible?
 - Hardin V. Com 2007WL79055
 - 701 lay witness vs. 702 expert witness
 - Bridgers V. Com 2007WL121846
 - Unreported cases can be cited
 - CR 76.28 (4)(c)
 - US V. Horn 185F2d530
 - Ohio V. Homan 732 NE 2d. 952 (2000)
 - Ohio V. Schmitt 801 NE 2d. 446 (2004)



Field Tests

- Use Manual
- Review things done right – Absence of indicators
- Use own scoring chart with things done right & wrong
- May not have failed tests using manual – 1 clue no matter how many times repeated
- Review things cop did wrong – contrary to manual



General Concerns

- Be aware of what is happening during tests
- Weather
 - Cold
 - Wind
 - Snow
 - Ice
 - Rain
- Other Traffic & Flashing Lights
 - Amount of traffic
 - Lights (HGN)
 - Proximity to citizen



General Concerns (cont.)

- Noise
 - People walking by (talking, watching, phone calls, music)
 - Traffic
 - Wind
- Road Conditions
 - On slope
 - Not level
 - Dark – can't see
 - Rocks, grass, mud, gravel



General Concerns (cont.)

- Cop doesn't know citizen
 - Coordinated or not
 - Athletic
 - Scared
 - Nervous
 - Physical Impairment
 - Mental Impairment
 - Disease



DUI/STANDARDIZED FIELD SOBRIETY TESTING COURSE

Reference Guide Basic Training

**Contact Numbers
Switchboard 859-622-1328
DUI Enforcement 859-622-2309**

Revised 10/2006

Kentucky Justice & Public Safety Cabinet

Department of Criminal Justice Training

**Certification of Copies of Official Government Records
Pursuant to KRE 902, KRE 1003 and CR 44.01**

Wilbur M. Zevely

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Street/P. O. Box

Florence

City

KY

State

41022-6910

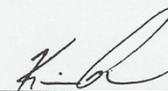
Zip Code

Official Document Description:

- DUI/SFST Manual (Volume I & II)

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The original records were made or kept in the regular course of business or activity, of this agency, and it was the regular course of business of the *Department of Criminal Justice Training*, to keep, record, or cause to be recorded in a timely manner such records of the act, transaction, occurrence or event reflected therein. These records were made or otherwise created by a technician trained or employed by the *Department of Criminal Justice Training*. This certification is given pursuant to KRE 902, KRE 1003 and CR 44.01 by the custodian of the records for the above named government agency in lieu of my personal appearance.



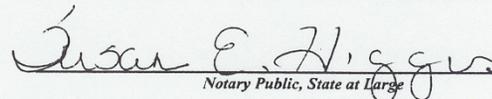
Official Custodian of Records

State of Kentucky

County of Madison

Subscribed and sworn to and acknowledged before me this 29 day of November,

20 04.



Notary Public, State at Large

My commission expires: 10/07/07



U.S. DEPARTMENT
OF TRANSPORTATION

DWI Detection and Standardized Field Sobriety Testing

February 2006 Edition

Student Manual





In Car Field Sobriety Tests

- Number Count – 28 to 16
- Alphabet – D to Q
- Finger Count

NOTE: This technique should never be given using starting and stopping points that end in 0 or 5 because these numbers are too easy to recall. For example, do not request that the driver count backwards from 65 to 50. Instead, ask the driver to count backwards from 64 to 49.

FINGER COUNT

In this technique, the subject is asked to touch the tip of the thumb in turn to the tip of each finger on the same hand while simultaneously counting up one, two, three, four; then to reverse direction on the fingers while simultaneously counting down four, three, two, one.



In each instance, note whether and how well the subject is able to perform the divided attention task.

THE EXIT SEQUENCE

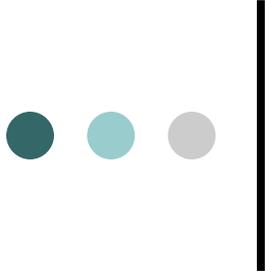
Your decision to instruct the driver to step from the vehicle usually is made after you have developed a suspicion that the driver is impaired.* Even though that suspicion may be very strong, usually the suspect is not yet under arrest when you give the instruction.

How the driver steps and walks from the vehicle and actions or behavior during the exit sequence may provide important evidence of impairment. Be alert to the driver who:

- o shows angry or unusual reactions;
- o cannot follow instructions;
- o cannot open the door;
- o leaves the vehicle in gear;
- o "climbs" out of vehicle;
- o leans against vehicle;
- o keeps hands on vehicle for balance.

Proper face-to-face observation and interview of a driver requires the ability to recognize the sensory evidence of alcohol and/or other drug influence and the ability to describe that evidence clearly and convincingly. Developing these abilities takes practice.

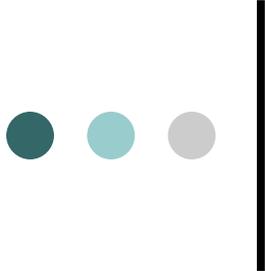
*Except, however, that you may instruct a suspect to exit the vehicle as a means of ensuring your own safety. Safety considerations take precedence over all other considerations.



Recognized Field Tests

The three field tests recognized in the manuals are the Walk-And-Turn Test, One-Leg-Stand Test and the Horizontal Gaze Nystagmus Test. These tests are unreliable and failure designed. Cole & Cole, “New Proof That Field Sobriety Tests Are ‘Failure Designed’”. Law & Science, DWI Journal, Volume 6, Number 2, February, 1991.

According to the instructions in the manuals, most police officers fail to comply with the requirements for giving the tests. If the officer fails to conduct the test in the proper manner, it should be excluded.



It is necessary to emphasize this validation applies only when:

- The tests are administered in the prescribed, standardized manner
- The standardized clues are used to assess the suspect's performance
- The standardized criteria are employed to interpret that performance.

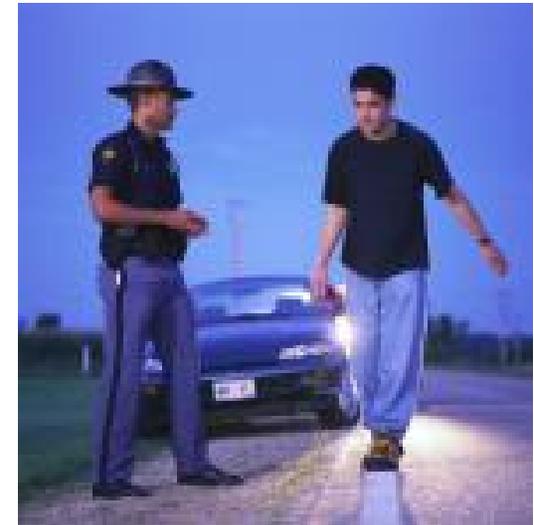
If any one of the standardized field sobriety test elements is changed, the validity is compromised.

At end of the test, examine each factor and determine how many clues have been recorded. Remember, each clue may appear several times, but still only constitutes one clue.



Walk-And-Turn Test

1. Instructions must be given exactly in accordance with National Highway Traffic Safety Administration procedures.
2. The officer must demonstrate the test according to the diagram.





Walk-And-Turn Test

Eight indicators – Two or more to fail

- a. Cannot keep balance while listening to the instructions. (can sway and use arms)
- b. Starts before the instructions are finished.
- c. Stops while walking.
- d. Does not touch heel-to-toe. (> 1/2 inch)
- e. Steps off the line. (entirely off the line)
- f. Uses arms to balance.
- g. Improper turn.
- h. Incorrect number of steps.



Procedures for Walk-and-Turn

○ Instructions Stage

- Place your left foot on the line (demonstrate)
- Place your right foot on the line ahead of the left foot, with heel of right foot against toe of left foot (demonstrate)
- Place your arms down at your side.
- Keep this position until I tell you to begin.
Do not start to walk until told to do so.
- Do you understand the instructions so far?



Procedures for Walk-and-Turn (cont.)

- Demonstrations and Instructions for the Walking Stage
 - When I tell you to start, take nine heel-to-toe steps, turn, and take nine heel-to-toe steps back (demo 3 steps)
 - When you turn, keep the front foot on the line, and turn by take a series of small steps with the other foot, like this (demo)
 - While your walking, keep your arms at your sides, watch your feet at all times, and count your steps out loud.
 - Once you start walking, don't stop until you have completed the test.
 - Do you understand the instructions?
 - Begin and count your first step from the heel-to-toe position as 'One'.



Walk-And-Turn Test (cont.)

This test should be given on a reasonably dry, hard, level, non-slippery surface.



Walk-And Turn Test (cont.)

Individuals over 65, back, leg or middle ear problems had difficulty performing this test. Individuals wearing heels more than 2” high should be given the opportunity to remove their shoes.



Walk-And-Turn Test (cont.)

Examples of conditions that may interfere with suspects performance of the walk and turn test

- Wind/Weather conditions
- Suspects age, weight
- Suspects Footwear

Test accuracy 68%, VIII 11, 18

SCORING THE WALK & TURN

Original Source Unknown

<u>Possible Points</u>	<u>Points Awarded</u>	<u>Exercise Performed</u>
1	_____	Can't Balance During Instructions
1	_____	Starts Too Soon
18	_____	Stops While Walking
18	_____	Touches Heel-to-Toe
18	_____	Steps Off Line
18	_____	Uses Arms to Balance
1	_____	Improper Turn
<u>18</u>	_____	Wrong Number of Steps
93		

Total points:

$$\underline{\hspace{2cm}} \div 93 = \underline{\hspace{1cm}}$$

$$\underline{\hspace{2cm}} \times 100 = \underline{\hspace{1cm}} \%$$



One Leg Stand Test

- Four Indicators- two or more to fail
 - Sways while balancing
 - Uses arms for balance (>6")
 - Hopping
 - Puts foot down



One-Leg-Stand Test

Instructions stage

- Please stand with your feet together and your arms down at the sides, like this. (demonstrate)
- Do not start to perform the test until I tell you to do so.
- Do you understand the instructions so far?



One-Leg-Stand Test (cont.)

Instructions for Balance and Counting Stage

- When I tell you to start, raise one leg, either leg, approximately six inches off the ground, foot pointed out (demo).
- You must keep both legs straight, arms at your side.
- While holding that position count out loud in the following manner: one thousand one, one thousand two, until told to stop (demo).
- Keep your arms at your sides at all times and keep watching the raised foot.
- Do you understand?
- Go ahead and perform the test (Officer should always time the 30 seconds).



One-Leg-Stand Test (cont.)

Like the Walk-and-Turn Test, the One-Leg Stand should be given on a reasonably dry, hard, level non-slippery surface.



One-Leg-Stand Test (cont.)

Individuals over 65, back, leg, middle ear problems, or people more than 50 pounds overweight had difficulty performing this test. Individuals wearing heels more than 2 inches should be given the opportunity to remove their shoes.

Accuracy 65%, VIII 13, 14



Weight Chart

WEIGHT CHART

HEIGHT (feet, inches)	MINIMUM FOR ALL ADULTS	Recommended maximum for ages up to 25 years	Recommended maximum for ages between 25 & 45 years	MAXIMUM FOR ALL ADULTS (45+)
4' 8"	89	102	107	111
4' 9"	92	106	111	115
4' 10"	95	110	115	119
4' 11"	99	114	119	124
5' 0"	102	118	123	128
5' 1"	106	121	127	132
5' 2"	109	125	131	136
5' 3"	113	130	135	141
5' 4"	116	134	140	145
5' 5"	120	138	144	150
5' 6"	124	142	148	155
5' 7"	127	147	153	159
5' 8"	131	151	158	164
5' 9"	135	155	162	169
5' 10"	139	160	167	174
5' 11"	143	165	172	179
6' 0"	147	169	177	184
6' 1"	151	174	182	189
6' 2"	155	179	187	194
6' 3"	160	184	192	200
6' 4"	164	189	197	205
6' 5"	168	194	202	210

SCORING THE ONE LEG STAND

Original Source Unknown

<u>Possible Points</u>	<u>Points Awarded</u>	<u>Exercise Performed</u>
1	_____	Following Officer's Instructions
30	_____	Not Swaying
30	_____	Not Using Arms For Balance
30	_____	Not Hopping
30	_____	Keeping Foot Off The Ground
<u>30</u>	_____	Counting Properly
151		

Total points:

$$\underline{\hspace{2cm}} \div 151 = \underline{\hspace{1cm}} .$$

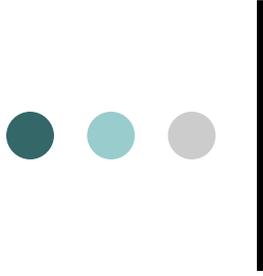
$$\underline{\hspace{2cm}} \times 100 = \underline{\hspace{2cm}} \%$$



HORIZONTAL GAZE NYSTAGMUS TEST



Nystagmus is defined as an involuntary jerking of the eyes. Alcohol and certain other drugs cause Horizontal Gaze Nystagmus.



HORIZONTAL GAZE NYSTAGMUS TEST (cont.)

Nystagmus can also result directly from neural activity:

- Optokinetic Nystagmus occurs when the eyes fixate on an object that suddenly moves out of sight, or when the eyes watch sharply contrasting moving images.
- Examples of optokinetic nystagmus include watching strobe lights, rotating lights, or rapidly moving traffic in close proximity. The Horizontal Gaze Nystagmus test will not be influenced by optokinetic nystagmus when administered properly.



HORIZONTAL GAZE NYSTAGMUS TEST (cont.)

Nystagmus may also be caused by certain pathological disorders. They include brain tumors and other brain damage or some diseases of the inner ear. These pathological disorders occur in very few people and in even fewer drivers.



Horizontal Gaze Specific Procedures

- If the suspect is wearing eyeglasses, have them removed.
- Give the suspect the following instructions from a safe position:
 - I am going to check your eyes
 - Keep your head still and follow this stimulus with your eyes only
 - Keep following the stimulus with your eyes until I tell you to stop



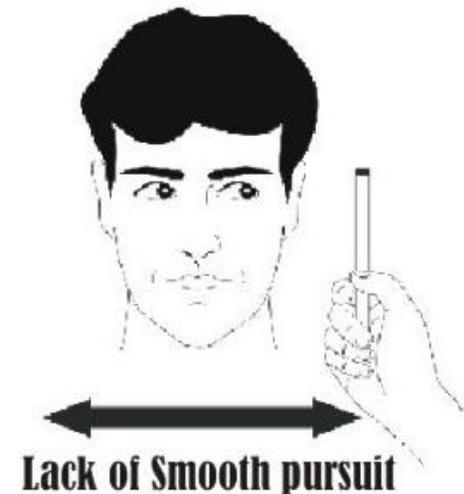
Horizontal Gaze Specific Procedures (cont.)

- Position the stimulus approximately 12-15 inches from the suspect's nose and slightly above eye level. Check to see if the eyes track the stimulus together or one lags behind the other. If the eyes don't track together it could indicate a possible medical disorder, injury, or blindness.

HORIZONTAL GAZE NYSTAGMUS TEST (cont.)

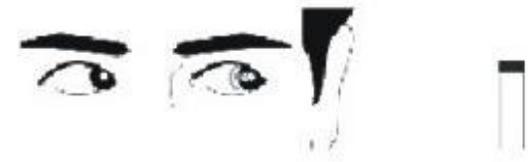
Three Indicators

1. The Lack of Smooth Pursuit (Clue Number One) – The eyes can be observed to jerk or “bounce” as they follow a smoothly moving stimulus, such as a pencil or penlight. The eyes of an unimpaired person will follow smoothly, i.e., a marble rolling across a smooth pane of glass.



HORIZONTAL GAZE NYSTAGMUS TEST (cont.)

2. Distinct Nystagmus At Maximum Deviation (Clue Number Two) – Distinct nystagmus will be evident when the eye is held at maximum deviation for a minimum of four seconds. People exhibit slight jerking of the eye at maximum deviation, even when unimpaired, but this will not be evident or sustained for more than a few seconds. When impaired by alcohol, the jerking will be larger, more pronounced, sustained for more than four seconds, and easily observable.

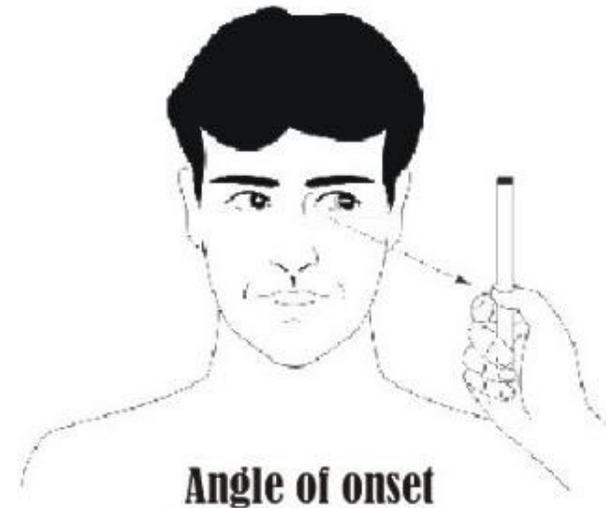


**Nystagmus at
maximum deviation**

HORIZONTAL GAZE NYSTAGMUS TEST (cont.)

3. Onset of Nystagmus Prior to 45 Degrees (Clue Number Three) – The point at which the eye is first seen jerking. If the jerking begins prior to 45 degrees it is evident that the person has a BAC above 0.08, as shown by recent research.

The higher the degree of impairment, the sooner the nystagmus will be observable.



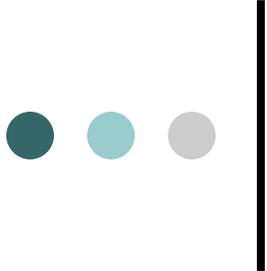
Note key word PRIOR

VIII 5



HORIZONTAL GAZE NYSTAGMUS TEST (cont.)

Procedure	Objective	Looking For	Speed of Stimulus
Equal Tracking	Rule out medical impairment	Both eyes to track at the same time; equal pupil size; resting nystagmus.	2 seconds from starting point to outside of shoulder, 2 seconds back.
Smooth Pursuit	Look for nystagmus	Each eye to pursue smoothly	2 seconds from starting point to outside of shoulder, 2 seconds back.
Maximum Deviation	Look for nystagmus	Distinct and sustained nystagmus for at least 4 seconds	Does not matter
Onset Prior to 45 degrees	Look for nystagmus	Nystagmus from starting point to any point prior to 45° angle.	From starting point, move slowly approximately 4 seconds to 45° angle, return to starting point at normal speed.
Vertical	Look for nystagmus	Nystagmus when eyes are held, looking upward, for at least 4 seconds	Does not matter.

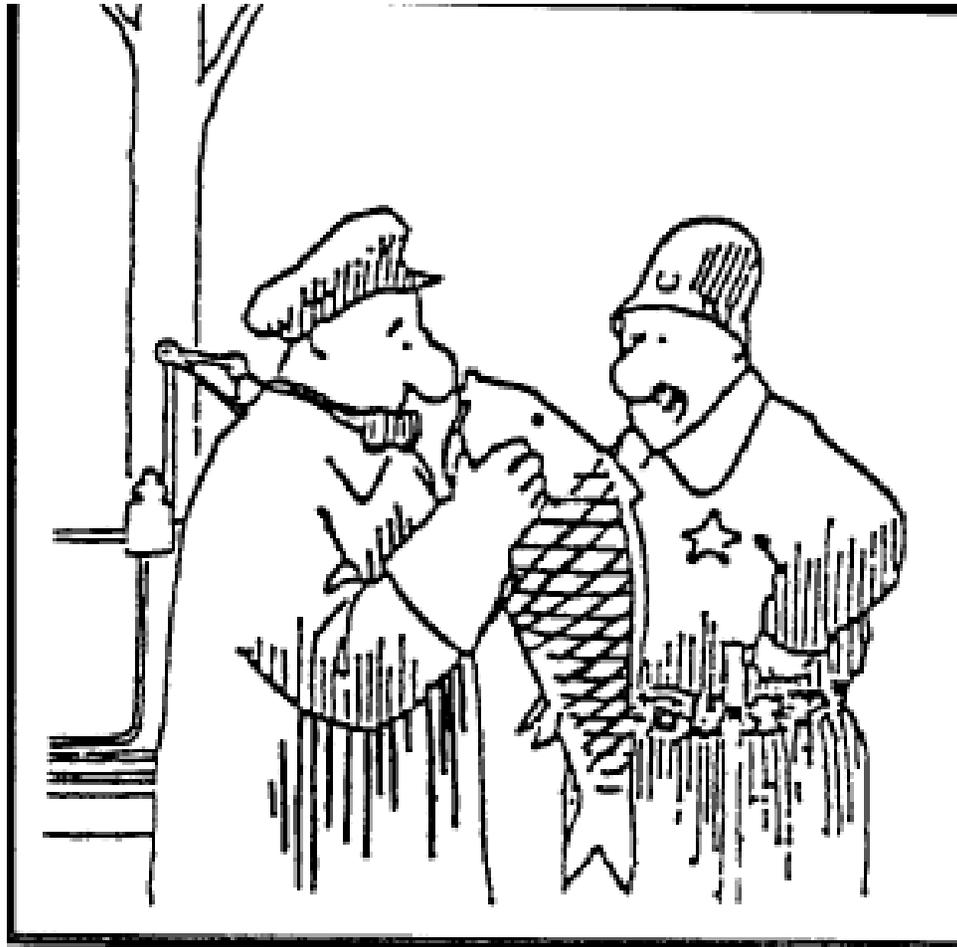


HORIZONTAL GAZE NYSTAGMUS TEST (cont.)

Examples of conditions that may interfere with suspect's performance of the Horizontal Gaze Nystagmus test:

- Wind, dust, etc. irritating suspect's eye
- Visual or other distractions impeding the test (always face suspect away from rotating lights, strobe lights and traffic passing in close proximity).

Accuracy 77%, VIII 8, 15



Carp were once used as alcohol breathalyzers. The police figured that any person who would put a carp in his mouth and blow into it would have to be stone drunk.